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SPECIAL CIVIL APPLICATION NO. 11645 OF 1994.

Date of Decision: 14.12.1995

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr R D Pathak, Advocate for the petitioner

Mr Kamal Trivedi with Mr Y H Vyas, Advocates for Trivedi Gupta for respondents No.1 & 2

Mr K S Nanavati, Advocate for respondent No.4

CORAM ; N N MATHUR, J

(December 14, 1995)

#### ORAL JUDGMENT

I have heard Mr R P Pathak, learned Advocate for the petitioner-Petro Polyols Ltd. and Mr Y H Vyas, Advocate for respondents No.1 & 2 - Gujarat Industrial Development Corporation (hereinafter referred to as 'GIDC') and Mr K S Nanavaty, Advocate for respondent No.4 - Reliance Industries Ltd.

2. In this Special Civil Application, petitioner No.1- Petro Polyols Ltd. is a Public Limited Company and Petitioner No.2 Mr P S Sahni is the promotor, Chairman as well as shareholder of petitioner No.1. The second petitioner made an application to the

respondent No.2- GIDC for allotment of suitable land to the petitioners for its industrial project namely; "Petro Polyols Project". The second respondent - GIDC, by letter dated 4.3.1986 allotted 1,61,800 sq.Mts. of land in survey No 148 and 148P at Village Mora, Taluka Choryasi, District Surat. The possession of the land was handed over to the petitioner No.1 on 21.4.1986. Pending final fixation of price, the petitioner was asked to make payment of Rs.38,894/and Rs.17,113/- as overhead - in total Rs.66,007/-. The petitioner deposited a sum of Rs.12,45,000/- on different dates during the period 15.3.1986 to 2.11.1987. The industrial plot was allotted for the purpose of carrying industrial activity within the time bound schedule. The say of the petitioner is that they could not put into operation the project for which the land was taken, due to non-availability of propylene as a result of which, the petitioner commenced planning the second project i.e. petrochemicals for Oil and Gas Industry and some of its basic chemicals as raw materials. For this purpose, the petitioner entered into a technical collaboration agreement with Deva Technology (UK) in association with ICI (UK). The petitioner addressed letter in this regard to the GIDC on 22.8.1992. The further development was informed by letter dated 17.10.1992. Another letter dated 5.8.1993 was addressed to the Managing Director, GIDC stating the difficulty in getting the propylene and stated that it is likely to be obtained by 1996. The petitioner also expressed that in the facts of the case, it is necessary for them to replan the additional project namely; (i) Oil Field Chemical for Gas and Oil Industries and (ii) Pharmaceutical intermediate. The petitioner also disclosed the latest status of this project as stated in the letter dated 1.6.1993 from Robert A Herndon, Attorney at Law of California addressed to the petitioner No.2. There is another communication dated 24.9.993 informing the progress of the matter. The further say of the second petitioner is that in October 1993, he left the country to explore and seek help from the Non-resident Indians and acquaintance for establishing the project. However, when he returned Indai in May 1994, he came to know that the land allotted to the petitioner has been illegally allotted to some other Company in the month of April 1994 or thereabout. Thus a letter dated 5.4.1994 was addressed to the GIDC through Advocate calling upon to state whether the said land has been allotted to some other Company. The said communication was not replied by the respondent GIDC. On 6.7.1994, reiterating the same contents, another notice was given under Annexure 'K' calling upon the respondent to verify the fact of allotment of land, but the same was also not replied.

3. In this petition it is prayed that respondent No.4 be directed to vacate the plot under reference forthwith so as to facilitate the respondents No.1, 2 and 3 to restore the possession on the same conditions on which it was allotted to the petitioners under the letter of allotment dated 4.3.1986. In alternative, it is prayed that a direction be given to respondent-GIDC to refund

the amount of Rs.12,45,000/-, plus the preliminary expenses incurred by the petitioners. The main ground of attack is that respondent No.4 is a very big Company having substantial political influence, and therefore, there is reasonable ground to believe that respondents No.1, 2 and 3 in collusion with respondent No.4, has taken such illegal and ultra vires action against the petitioner. It is also stated that a mode is prescribed for vacating the premises allotted to an industry under the provisions of Gujarat Industrial Development Act, 1962, and that there was no impediment on the part of respondents No.1, 2 and 3 in following those procedures, and therefore, the act of respondents No.1,2 and 3 allotting the land under reference to respondent No.4 is arbitrary, violative of principles of natural justice and is in collusion with respondent No.4.

4. The GIDC, in its reply, stated that the petitioner has conveniently concealed the essential facts which have material bearing on the controversy involved. It is stated that the petitioner No.2 failed to utilise the plot in question allotted to him for industrial purposes within the stipulated period and as such a notice dated 20.5.1993 was issued to the petitioner calling upon him as to why the allotment should not be cancelled for non-utilisation of the plot allotted to him. A panchnama of the site was also prepared which shows that there was absolutely no industrial activity on the plot under reference. As no reply was filed, the allotment was cancelled by letter dated 29.6.1993. Thereafter, the competent officer pointed out that under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (for short, the 'Act' of 1972) a show cause notice dated 27.7.1993 was issued calling upon the petitioner as to why the proposed order of eviction should not be made. Thereafter, the competent officer passed order of eviction dated 18.8.1993 under section 5 of the Act of 1972. It is also stated that there is a remedy of appeal under section 9 to the Court of District Judge under the Act of 1972, which the petitioner has not availed. It is further stated that after the order of the competent authority dated 18.8.1993, the possession of the plot under reference has been taken on 27.9.1993. The rescind plot was offered to respondent No.4 on 12.10.1993 at the rate of Rs.80/- per sq. meter a....

1,29,50,400/which was deposited under protest and as such the possession was delivered on on 23.10.1993.

5. Mr B L Yadav, Constituted Attorney of respondent No.4 has filed an affidavit indicating the present status of Investment with reference to the plot in question as follows:

"The respondent No.4 has invested a large amount for developing the aforesaid land and making it suitable for construction. The Company has constructed its security office for the Petro Chemicals Complex on the aforesaid land. The entire Petro Chemical Complex comprising of numerous units manufacturing a range of Petro Chemical Products have been planned and designed and the sites

frozen keeping in mind the availability of the aforesaid plot of land. Various units which form part of the Phase-I of the Petro Chemicals Complex have already been constructed at a cost of approximately Rs.2000/- crores. The construction work of Phase-II of the Petro Chemicals and Plastics Project of the respondent No.4 is substantially completed. The Phase-II consists of a Gas Cracker complex, Polyester Unit, PTA, Poly Propylene, Captive Power Plant 2, etc. and the committed investment for the aforesaid Phase is approximately Rs.6000 crores of which about 60% has already been invested. According to the site plan, the respondent No.4 has put up the material entry gate for all the units on the aforesaid land for all capital goods projects and also for construction material for Phase-II projects. The respondent No.4 has submitted the entire plan for approval of the Central Excise and other statutory authorities. The aforesaid land is P....

is proposed to construct administrative office for the entire complex on the aforesaid plot of land."

6. Mr P S Sahni has filed affidavit-in-rejoinder stating that the petitioner came to know about the eviction proceedings only from the affidavit filed by the respondents in November, 1994. He was told about this fact while he was in U.K., and therefore, under his instructions, during the pendency of this writ petition, his Advocate Mr R D Pathak served a notice on the Advocate for the respondent Mr Kamal Trivedi, calling upon him to produce the copy of the final order dated 20.9.1993. He also sought inspection of the Panchnama and outward register of GIDC. Identical notice was issued by the learned Advocate Mr R D Pathak on 17.1.1995 as well. A copy of both the notices has been placed at Annexures 'M' and 'N' respectively. It is stated that no reply to the said notices has been given by the respondents. It is also stated that the petitioner had sent number of letters to the respondent during the period from August 1993 to October, 1994, but none of them were replied. The petitioner wants to draw an inference from this fact that in fact, if the order of cancellation of allotment and other eviction orders were passed, the same would have reflection in the letters of the respondents and they would have definitely replied.

7. At the outset, it is contended by the learned Advocates for the respondents that this Special Civil Application deserves to be dismissed summarily firstly for the reason that the petitioner is guilty of suppressing the material fact; secondly, that the petitioner has failed to avail statutory alternative remedy under section 9 of the Act of 1972; and thirdly, the petition involves disputed questions of facts.

8. Mr R D Pathak, learned Advocate for the petitioner submits that in the present case, the malafides and arbitrariness is much apparent on the face and as such in view of the law laid down by the Apex Court in the case of KUMARI SHRILEKHAA VIDYARTHI v. STATE OF U.P. & ORS., reported in 1991 (1) SCC 212, this court must look into the facts of the case. He submits that the crux of the matter is whether various notices as claimed to have been issued by the respondent were in fact issued and served on the petitioner. Mr K S Nanavati, learned Advocate for respondent No.4 submits that even this question can be raised and examined before the appeal forum provided under the Act of 1972.

9. Considering the facts of the case, it would be appropriate to examine the question as to whether the notices and other orders referred to above were served on the petitioners or not.

I. NOTICE dated 20.5.1993

The Regional Manager, GIDC, Surat, under letter dated 20.5.1993 informed the petitioner No.2 Mr P S Sahni on the address - B 203, Greater Kailash Park - I, New Delhi, that they were required to get the plan approved from the competent authority within six months and to complete the construction of the factory building and to start the production within 3 years, as the petitioner has failed to do so, the GIDC has been left with no option but to rescind the allotment and to resume the possession of the land in question. However, before taking such decision, the petitioner was called upon to give reply within 30 days from the date of receipt of the letter. The petitioner says that the petitioner No.2 did not receive the said letter dated 20.5.1993, Respondent-GIDC has produced certain material evidence in this regard. There is an outward No.4760 on the letter dated 20.5.1993. A xerox copy of the envelope addressed to Mr P S Sahni at the Delhi address produced by the respondent also bears outward No. 4760. There is an endorsement of Postal authority on the said envelope that "inspite of repeated visits, the addressee is not available". The postal acknowledgement also bears the outward register number as 4760 dated 20.5.1993. It was returned without the signature of the addressee. The respondent-GIDC has produced copy of the panchnama dated 21.5.1993. a perusal of which shows that the notice was affixed on the plot under reference. On the basis of this material evidence, it is contended by the learned Advocate for the respondent that the notice for cancellation of allotment could not be served on Mr Sahni petitioner No.2 as he was not available on the address given by him, and therefore, in the facts of the case, the service was effected by substituted service. On the envelope, there is a seal of the postal department. On the back of the envelope, the different dates of visits appears to have been given by the postman. The dates given are 1.6.1993, 3.6.1993, 4.6.93, 5.6.93, 7.6.93, 14.6.93 and there is also a postal seal of 11.6.1993, This fact conclusively indicates that the notice dated

20.5.1993 was received at Delhi and the postman visited the place of address of Mr PS Sahni, but as he was not available, the same could not be served. It is also evident from the Panchnama that copy of the notice was affixed on the plot. Thus in my view, the service of notice dated 20.5.1993 was effected by substituted service.

## II. NOTICE DATED 29.6.1993

The petitioner says that he has not received the order of cancellation dated 29.6.1993. The learned Advocate for the respondents has invited my attention to outward number as appears from the said letter being 5689. The postal acknowledgement bears the same outward number which has been given on the letter dated 29.6.1993 i.e. 5689. The respondent has also produced xerox copy of an outward register regularly maintained by the GIDC. There is an entry bearing entry Nu. 5689 addressed to Mr P S Sahni and the subject has also been given therein. Another documentary evidence is a copy of the register of the postal department in which the registered letters sent are being entered. It appears that in the said register, on the posting of 30.6.1993, there is an entry at sr.no.5 i.e. number 1531 in the name of Mr P S Sahni, New Delhi bearing outward Number 5689. Considering the postal register maintained by the postal department in the regular course and so as the outward register maintained by the respondent-GIDC regularly, there is no reason to disbelieve the entries therein. In view of this, there is ample material to show that the order of cancellation dated 29.6.1993 was despatched to the petitioner No.2. The respondent has also produced panchnama showing that the notice was affixed on the vacant plot. In view of this, in my view, there is sufficient proof to believe that the service of notice dated 29.6.1993 was effected on the respondent by substituted service.

## III. NOTICE dated 27.7.1993

The competent officer, under the Act of 1972, issued a notice under section 4 of the Act of 1972 to the petitioner No.2 at his Delhi address. There is panchnama served by affixing the notice on the plot under reference. This panchnama bears outward number 6781. There is a postal acknowledgement on which also the same outward number 6781 appears. There is also a postal seal on the postal acknowledgement. In the outward register of the GIDC, the entry of the letter addressed to Mr P S Sahni as notice under section 4 finds the number as 6781. Similar entry is also available in the register of the Postal department. Thus, considering the postal evidence and of the panchnama, there is sufficient service by substitution.

IV. NOTICE dated 18.8.1993

By order dated 18.8.1993 the competent officer passed order of eviction under the provisions of section 5 of the Act of 1972. The petitioner has denied receipt of this order as well. The notice dated 18.8.93 bears outward No.9391, and the same outward number appears on postal acknowledgement, having the postal seal thereon. There is an entry in the postal register as well bearing the same outward number i.e. 9391. There is also panchnama, showing the fact that the copies of the order affixed on the plot. Thus the fact that the outward number arising from a regularly maintained register, find place on the copies of the order dated 18.8.93, which tallies with the outward number on the postal acknowledgement, bearing the postal receipt and further the same outward number finds place in regularly maintained register of the postal department coupled with the fact that there is a panchnama, showing that the copy of the order was affixed on the plot, leads to the only conclusion that the copy of the order was sent by the GIDC on the address of the petitioner as given by him. If the petitioners have not given the correct address, they must thank themselves. Thus, in the facts of the case, there is sufficient service by substitution.

V. LETTER dated 20.9.93.

In view of the order passed under section 5, by communication dated 20.9.1993, the petitioner was informed that the possession of the plot under reference shall be taken on 27.9.1993 at 11.00 hrs. This order bears outward number 8502. The same number is found on the postal acknowledgement which also bears the postal seal and is addressed to Mr P S Sahni, New Delhi. There is some controversy with respect to the signature of the addressee. The respondent-GIDC says that it was received by some of the family members of Mr Sahni and/or in any case, by persons in his office. Affidavit of Mr Kaushik has been filed. He has stated that he was the Manager of petitioner No.1, and the petitioner No.2 who is his close friend. After he left the job of petitioner No.1, he was looking after the correspondence and papers of petitioner No.1. He has further stated that his attention was being invited to the signature of the addressee shown at page 23 on the postal acknowledgement. He says that the signature is not of any employee or any person or Director including the petitioner No.2 of petitioner No.1. He has further stated that the said signature is also not of any relatives of petitioner No.2. Mr Kaushik has not disclosed as to during which period he was Manager of petitioner No.1. In absence of this fact, it is not possible for him to say that he is acquainted with the signature of all the employees of petitioner No.1 in Delhi during September 1993. In view of this fact, the affidavit of Mr Kaushik is of no consequence. The

respondent has also produced its outward register, which bears outward number 8502. The same number has been shown on the communication dated 20.9.1993. This also finds place in the postal register as well. In view of this, in my view, this order was also duly served on the petitioner No.2 by substituted service.

On 13.12.1995, I directed the GIDC to produce the original record in this regard. Today I have perused the original records and checked every notice/communication referred to above. I have also checked the notices as well as panchnamas. On perusal, it appears that the file is regularly maintained, and there appears to be no chance of manipulation as alleged. There is no reason to impute motives of preparing false evidence to the extent of preparing false notices, orders, outward registers etc. The entry find place in the record of the Postal Department as well. Simply because the plot has been given to respondent No.4, and the said firm has big business empire, necessary inference of manipulation at their instance cannot be drawn. If it is so, it can equally apply to the petitioner as well. No malafides can be attributed on a vague statement that respondent No.4 is politically influential.

10. The say of Mr Sahni is that he left India in October, 1993 and returned in April 1994. It may be noticed that the entire proceedings of cancellation of the plot and eviction proceedings has taken place during the period 20.5.1993 to 18.8.1993. The plot was also delivered to respondent No.4 on 23.10.1993 and all the letters of the ipetitioner except one or two are subsequent to September 1994 from U.K. Mr Sahni has gone to the extent of saying that he came to know of the proceedings for the first time only from the reply filed by the GIDC. It is difficult to swallow that the petitioner No.1 which is a big business firm and the petitioner No.2 who is an industrialist, will not have that much of infrastructure in the country that they will not know about the aforesaid proceedings. In the facts of the case, I have no hesitation to hold that the petitioner has deliberately concealed the fact of the entire proceedings of cancellation of the plot under reference and the eviction proceedings and he has filed this Special Civil Application concealing this material fact. He is not only guilty of concealing the material fact but also guilty of misleading the Court.

11. It may also be stated that this court, by order dated 8.8.1995 directed the respondent-GIDC to show alternate land to the petitioner to select the site and if it is selected, the petitioner will make the proposal. The site was shown to the petitioner. Mr Sahni has filed an affidavit stating that the alternative land offered is not suitable for the purpose of Industry to be established by him.



12. In pith and substance, the industrial plot was allotted to the petitioner in 1986 and possession was also delivered for the purpose of establishing an industry as part of the scheme for rapid Industrial Development in the country. Unfortunately, the petitioner has not utilised the land. Thus, after having waited for long seven years, the allotment had to be cancelled. What to talk of establishing an Industry, the allottee has no workable project even today with him. The petitioner paid Rs.12,45,000/and did not utilise the plot. The respondent No.4 has paid Rs.1,29,50,400/- and within a year has developed the plot, which is evident from the averment made by Shri B L Yadav in para 4.2 of his affidavit extracted above. The demand of Industrial plot by the petitioner does not appear to be bonafide. Mr Sahni while busy around the world, wants to keep the plot unutilised for the purpose best known to him. Whatever may be the purpose, by his conduct, he is creating obstructions in the industrial growth of the country. In the fact of the case, to talk of observance of principles of natural justice does not lie in his mouth. In the case of CHAIRMAN, BOARD OF MINING EXAMINATION vs. RAMJEE, reported in AIR 1977 SC 965, the Apex Court has observed that Natural justice is no unruly horse, no lurking land mine, nor a judicial cure at all. Considering the fact of the case, I do not consider it to be a fit case for exercise of powers of this Court under Article 226 of the Constitution of India.

13. Turning to alternative prayer for refund of Rs.12,45,000/- plus preliminary expenses incurred, the relief cannot be granted, in absence of specific pleadings with details. However, the petitioner may make representation in this regard to the respondent-GIDC. The representation, if so made, shall be decided in accordance with law.

14. In view of the aforesaid, there is no merit in this Special Civil Application and the same is rejected. Notice discharged. There shall be no order as to costs.

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